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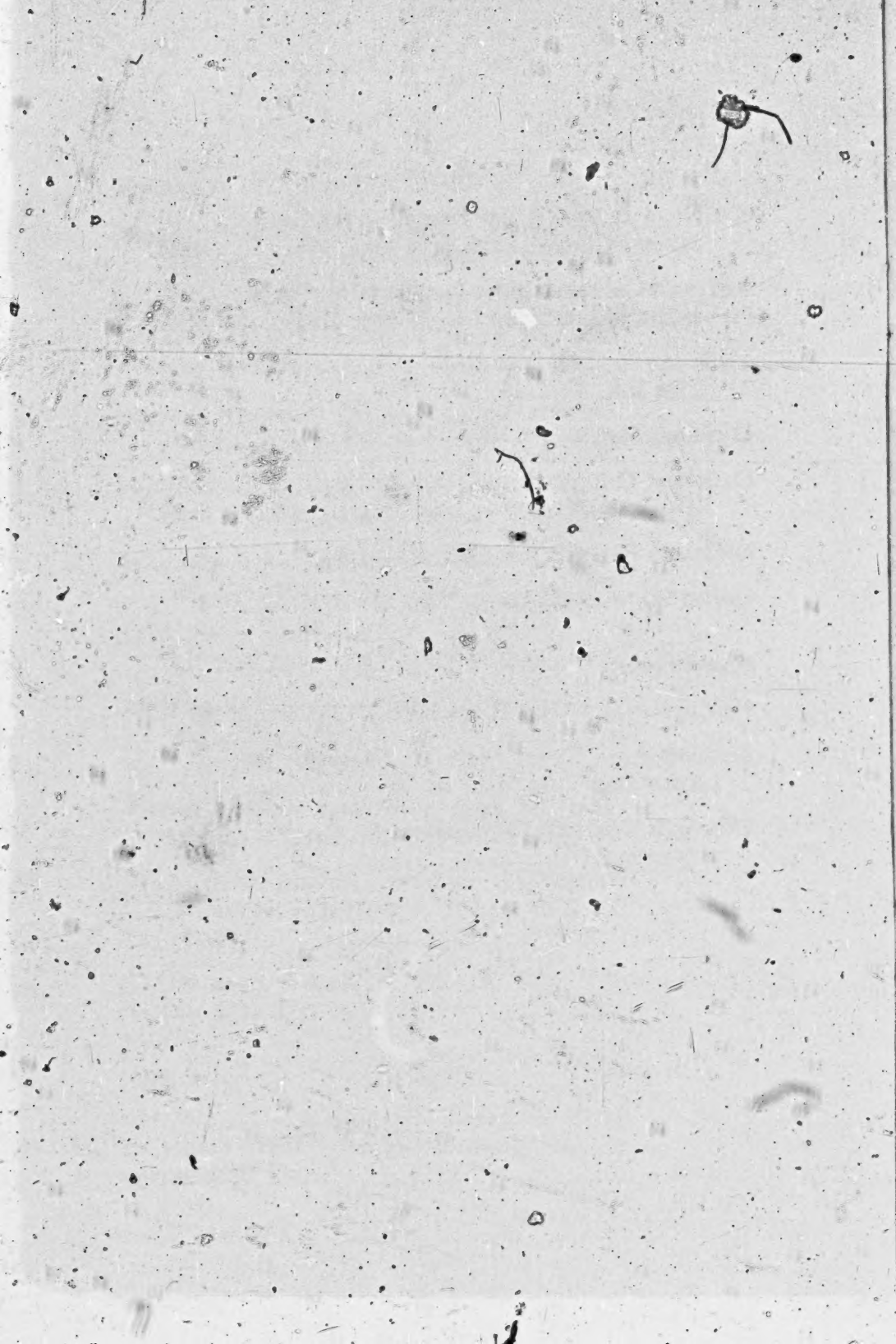

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 329

HUMBLE PIPE LINE COMPANY,

Petitioner,

versus

W. E. WAGGONNER, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF PARISH OF BOSSIER, LOUISIANA,

Respondent.

On Writ of Certiorari to the Court of Appeal Second Circuit, State of Louisiana

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BRIEF FOR HUMBLE PIPE LINE COMPANY

OPINIONS BELOW

The opinion of the Court of Appeal, Second Circuit, State of Louisiana *(R. 38)* is reported at 151 So. 2d 575. The decree of the Supreme Court of the State refusing application for certiorari to review the opinion of the Court of Appeal *(R. 67)* is reported at 152 So. 2d 561, 244 La. 463.

JURISDICTION

The opinion and judgment of the Court of Appeal, Second Circuit, State of Louisiana, in this case — in effect affirmed by the Supreme Court of the State — rejected Petitioner's contention that the State of Louisiana and its political subdivisions were without jurisdiction to levy ad valorem taxes upon private property located inside the boundaries of Barksdale Air Force Base — a military establishment or post situated in the Parish of Bossier, Louisiana — for the reason that the lands forming the post area were acquired by the United States with the consent of the State, thus vesting "exclusive legislation" (jurisdiction) over the area so acquired in the Congress of the United States under the provisions of Art. 1, § 8, cl. 17, of the Constitution of the United States.

The judgment of the Court of Appeal, Second Circuit, State of Louisiana *(R. 49)* was entered February 7, 1963. Application for a rehearing denied by that court (R. 49) on April 1, 1963, and timely application for a writ of certiorari to review the judgment of the Court of Appeal refused by the Supreme Court of the State *(R. 67)* on May 14, 1963, when the judgment of the Court of Appeal became final under La. C.C.P., art. 2617. The issuance of the mandate of the Court of Appeal, State of Louisiana, was stayed by order entered by that court on May 16, 1963, and the petition to this Honorable Court for a writ of certiorari was filed August 2, 1963.

The jurisdiction of this Honorable Court to review the federal question involved arising under the Constitution of the United States is invoked under 28 USCA, par. 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions and statutes involved are:

United States Constitution, Art. 1, §8, cl. 17:

"The Congress shall have Power

. . . .

"To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles, square) as may, by Cession of particular States, and the Acceptance of Congress become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; . . . ."

Louisiana Constitution — LSA-Const. Art. 4, § 12, par. 2, authorizing the State and its political subdivisions to donate lands to the United States for military uses, etc.:

"Provided further, that the State, or any agency or political corporation or subdivision thereof may, through the authorized representatives thereof, donate by fee simple title, or otherwise convey, to the United States any lands, property, movable and immovable, rights of way, easements or other servitudes, or any of them, which they now own, or may hereafter acquire by purchase, donation, expropriation or otherwise, . . . in connection with airports, flying fields, landing fields, . . . military posts, and for military uses; and for the purpose of acquisition and improvement of property for such pur-

poses, may incur debt, issue bonds and levy taxes as otherwise provided in this Constitution."

(see Appendix, *infra* p. 26, for complete text.)

Act No. 4 of the Regular Session of the Legislature of Louisiana for the year 1930, donating certain lands and water bottoms within the limits Barksdale Air Force Base to the United States:

"Whereas, the State of Louisiana owns lands which were formerly the beds of certain navigable bodies of water and of other streams in Bossier Parish, Louisiana, which are within a tract to be donated by the City of Shreveport to the United States of America for an airport, flying field, landing field, military post and military uses; and

"Whereas, the United States of America will not accept said tract of land without the inclusion of this property within said tract belonging to the State of Louisiana; and

. . . .

". . . . now therefore

"Be is enacted by the Legislature of Louisiana that all of the beds of the streams, lakes, bayous, and lagoons, whether navigable or non-navigable, lying within the following described area . . . be and is hereby donated to the United States of America for an air port, flying field, landing field, military, post and for military purposes."

(see Appendix, *infra*, p. 27, for complete text.)

In addition to the special legislative authority referred to relating to the particular means by which the lands involved were acquired by the United States, there

have been in effect, at all times relevant, statutes of the State generally ceding jurisdiction to the United States over lands required for forts, magazines, etc. (set forth in the appendix, infra p. 29, 31) which were embodied in the Revised Statutes of the State[1] as follows:

> "The United States, in accordance with the seventeenth clause, eighth section of the first article of the Constitution of the United States, may acquire and occupy any land in Louisiana required for the purposes of the federal government. The United States shall have exclusive jurisdiction over the property during the time that the United States is the owner or lessee of the property. The property shall be exempt from all taxation, assessments, or charges levied under authority of the state.
>
> "The state may serve all civil and criminal process issuing under authority of Louisiana on the property acquired by the United States."
>
> *LSA-R.S. 52:1*

QUESTIONS PRESENTED

In its opinion rendered herein, the Court of Appeal, Second Circuit, State of Louisiana, apparently conceded that the constitutional provisions and statutes of the State of Louisiana referred to herein evidence the unqualified consent of the State to the acquisition of the lands of Barksdale Air Force Base by the United States for military uses as required under Art. 1, § 8, cl. 17, of the

(1) No question need arise under any statutory "cession" because acquisitions by the United States of the particular character involved were specially authorized.

Constitution of the United States to vest exclusive jurisdiction over lands so acquired in the Federal government, but the court found that "circumstances" referred to in its opinion "evidence the intention of the United States not to accept exclusive jurisdiction over the area donated."

The principal questions presented consequently are:

Whether or not "circumstances" referred to in the opinion of the Court of Appeal — consisting of the mere purchase of public utility supplies from political subdivisions of the State for consumption and use upon the Air Force Base and the fact that children of those residing upon the Post attended the public schools of the Parish outside the Post area — were incompatible with the exercise of exclusive jurisdiction or should be construed as evidence of the intention of the United States (Department of the Air Force) not to accept exclusive jurisdiction over the Federal enclave when those furnishing utility supplies performed no services within the Post area and the Parish school system received a per capita charge for each child attending its schools;

Whether or not petitioner's use of a right of way (easement or servitude) for the maintenance of its pipelines across the lands of the Air Force Base has been in any sense incompatible with the exercise of exclusive jurisdiction over the Post area by the Department of the Air Force; and

Whether or not the State of Louisiana and its political subdivisions could (under the circumstances referred to) have validly levied ad valorem taxes for the

year involved on that portion of petitioner's interstate pipelines extending across lands of Barksdale Air Force Base acquired by the United States with the consent of the Legislature of the State.

STATEMENT OF THE CASE

During the year 1930, the United States acquired title to a tract of lands containing approximately 22,000 acres situated in the Parish of Bossier, Louisiana, through and by virtue of acts of donation executed by the City of Shreveport, Louisiana, the State of Louisiana, and the Bossier Levee District (a political corporation of the State) pursuant to authority granted under Art. IV, § 12, of the Constitution of the State (supra), which acts of donation were made and executed upon the condition that the United States would establish and maintain a military air force base upon the lands conveyed. During the years 1980, 1931 and 1932, the government of the United States caused extensive runways, administration buildings, living quarters, barracks, hangars and other structures and facilities required for the maintenance of a military air force post or base to be constructed upon the lands so acquired, costing many millions of dollars, which properties and constructions thereon (as an entity) now known as "Barksdale Field" or "Barksdale Air Force Base" have been maintained by the government at all times since as required by military air force demands (see admissions of fact, R 7).

On January 1, 1953, Interstate Oil Pipe Line Company, a corporation of the State of Delaware — the name

of which was changed by charter amendment effective July 31, 1961, to Humble Pipe Line Company (R 17).[2] — owned two interstate pipelines, each of which extended 2.91 miles within the area referred to as Barksdale Field. In preparing and compiling the assessments of oil pipelines for ad valorem tax purposes for the year 1953, the Louisiana Tax Commission included that portion of the pipelines of Interstate Oil Pipe Line Company situated within the limits of Barksdale Field, extending valuations thereon at standard rates aggregating $81,430.00, upon which assessments the State and its political subdivisions having general authority to tax in Ward 2, Bossier Parish, Louisiana, then imposed ad valorem taxes aggregating $1,315.36 (R. 10).

The taxes levied as set forth were paid under protest on December 30, 1953 (R. 11) and this suit instituted on the 5th day of January, 1954 (R. 2) to recover the amount so paid as permitted under the provisions of LSA-R.S. 47:2110 (Appendix p. 32) upon the grounds as stated in the petition, paragraphs 3 and 4 (R. 2):

> "That the conveyances referred to — through which the lands described were acquired by the United States — were executed with the consent and approval of the State of Louisiana in accordance with the provisions of the laws of the State relating thereto, under the terms of which exclusive jurisdiction of the lands conveyed was ceded or granted to the

---

(2) The name Humble Pipe Line Company was substituted for that of Interstate Oil Pipe Line Company as plaintiff in this action by order of the trial court dated October 4, 1962 (R. 17).

United States except in respect to the service of process issuing under State authority.

"That under the laws of the United States and State of Louisiana, the exclusive jurisdiction acquired by the United States over the federal area described completely ousted all jurisdiction and authority of the State and its political subdivisions within such area (including that of taxation), and that the State and the political subdivisions thereof have at all times since been without jurisdiction to assess any property therein for the purpose of ad valorem taxation or to impose such taxes thereon — no such authority having been conferred by Act of Congress."

Petitioner's demands for refund of the taxes paid were rejected by the trial court and that judgment affirmed on appeal (R. 38) for reasons set forth in the opinion of the appellate court as follows:

"The circumstances evidence the intention of the United States not to accept exclusive jurisdiction over the area donated for Barksdale Air Force Base. . . ." (R. 45)

. . . .

"The testimony shows conclusively that, just as in the International Business Machines Corporation case, supra,(3) the Federal Government, in the operation of Barksdale Air Force Base, is dependent upon the State and Parish authorities for public utilities and school facilities. The fact that it purchases these utilities at the gate to the reservation

(3) *International Business Machines Corp. v. Ott*, 230 La. 666, 89 So.2d 193.

or that the Federal Government pays to the parish school system a per capita charge for each child of a serviceman attending its schools would not have the effect of making the Federal Government any less dependent upon the State and Parish authorities for these services. Just as in the International Business Machines Corporation case, the acceptance of such services has manifested an intent on the part of the Federal Government not to exercise control in those respects." (R. 47)

. . . .

"Plaintiff Humble Pipe Line Company is vested with a servitude across the lands of Barksdale Air Force Base under which its lines pass. The existence of this real right evidences an imperfect ownership of the Government in the area traversed by the pipelines. Thus, as to the area subjected to to the servitude the government possesses only the naked ownership." (R. 47)

. . . .

". . . Here, either the Government took the lands donated to it subject to the plaintiff's existing right of servitude, or a grant of right of way was made to the plaintiff by the Government. The record does not show which was the case. Obviously, the Government acquired an imperfect title, or else it became vested with an imperfect title as to the lands traversed by the lines upon the grant of such a right of way. It either never acquired exclusive jurisdiction over the same or else, under the authority of the S. R. A. case,(4) it relinquished same." (R. 48)

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(4) *S.R.A., Inc. v. Minnesota*, 327 U.S. 558, 66 Supp. Ct. 749, 90 L. ed 851.

SUMMARY OF ARGUMENT

1. The respondent and the courts below concede the rule of law which vests in Congress exclusive jurisdiction over lands acquired by the United States with the consent of the Legislature of the state in which located for the erection of "forts, magazines," etc., and concede that Barksdale Air Force Base was acquired by the United States for those purposes with the consent of the State of Louisiana, but seek to avoid the invalidity of the ad valorem taxes involved by the assertion that the "circumstances" evidence the intention of the United States not to accept exclusive jurisdiction over the area.

2. However, none of the "circumstances" referred to by the courts — consisting merely of the purchase of utility supplies from municipalities of the State, the attendance of the children of servicemen in local public schools, and the fact that the petitioner holds an easement or servitude for the maintenance of its pipelines across the Post area — has been in any sense incompatible or in conflict with the exercise of the power of exclusive legislation over the enclave by the Post Command.

(a) To the extent that any municipal corporation of the State may have sold utility supplies to the Post Command, the municipality acted in a strictly proprietary capacity in private enterprise. The sales consummated at the Post "gate" were the same as any other purchase from private sources and cannot be regulated by state law.

(b) That children of parents residing upon the Post attended the local public schools by arrange-

ment made with the local authorities for the payment of tuition fees as authorized by act of Congress was in fact an acknowledgment that the Air Force Base was subject to the power of exclusive legislation since otherwise the arrangement would have been unnecessary.

(c) An easement for the maintenance of pipelines across a government enclave is in no sense incompatible with the power of exclusive legislation.

3. A state has no power to tax private interests within a Federal enclave subject to the power of exclusive legislation except as permitted by act of Congress.

4. The entire area of Barksdale Air Force Base having been dedicated to military uses by the Department of the Air Force, it is not open to the courts to inquire what may be the uses to which any portion of the area is temporarily put.

ARGUMENT

The controlling question presented in this cause is one purely of jurisdiction — the law applicable having been specifically set forth in paragraph 8 of the syllabus of the opinion rendered in *Surplus Trading Company v. Cook*, 281 U.S. 647, 50 S. Ct. 455, 74 L. ed. 1091, as follows:

"Private personal property located within an Army camp, the lands for which were acquired by the

> United States with the consent of the legislature of the state in which such lands are situated, cannot be subjected to state taxation, in view of the provisions of article 1, § 8, cl. 17, of the Constitution, giving Congress exclusive legislative authority over places so acquired."

And the rule as so expressed has been uniformly observed to preclude the states from taxing within an area subject to the power of "exclusive legislation" except as specially permitted by act of Congress so long as the proprietary interest of the government over such area continues.

> *Pacific Coast Dairy v. Department of Agriculture*, 318 U.S. 285, 63 S. Ct. 628, 87 L. ed. 761;
>
> *Offutt Housing Company v. Sarpy Co.*, 351 U.S. 253, 76 S. Ct. 814, 100 L. ed. 1151;
>
> *Collins v. Yosemite Park & Curry Co.*, 304 U.S. 518, 58 S. Ct. 1009, 82 L. ed. 1502;
>
> *Silas Mason Co. v. Tax Commission*, 302 U.S. 186, 58 S. Ct. 233, 82 L. ed. 187;
>
> *James v. Dravo Contracting Company*, 302 U.S. 134, 58 S. Ct. 208, 82 L. ed. 155.

It has not been questioned that Barksdale Air Force Base comes within the words "forts, magazines, arsenals", etc., as those terms are used in Art. 1, § 8, cl. 17, of the Constitution of the United States, nor has it been questioned that the 22,000 acres of lands upon which the Post is

located were "purchased" by the United States with the consent of the Louisiana Legislature.(5)

Although the answer of the respondent herein was a mere general denial setting forth no affirmative defenses, the position of the taxing authorities and of the courts below has been one of confession and avoidance; confession that the law operates to exclude the authority of the State within the Federal territory, but avoidance of the conclusion of invalidity by the assertion that the United States has, through the "circumstances" referred to, evidenced an intention not to accept — or to relinquish — exclusive jurisdiction.

At the time of the acquisition of the lands involved (1930), the act of October 9, 1940 (40 USCA, par. 255) had not been enacted. The consent of the State to Federal jurisdiction was then required before public monies could be expended (R.S. § 355) and the acceptance by the United States of the power ceded at that time is presumed.

S.R.A. v. Minnesota, 327 U.S. 558, 66 S. Ct. 749, 90 L. ed. 851.

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(5) The conveyances were made upon the condition that the United States would establish and maintain a military air force base upon the lands conveyed, and that condition was fulfilled at tremendous cost. The conveyances consequently were not real donations, but commutative contracts. *La. R.C.C.*, Art. 1524; *Thompson v. Societe Catholique d'Education Religieuse et Litteraire*, 157 La. 875, 103 So. 247. The term "purchase" in its legal sense is defined in *Webster's International Dictionary* as follows: "Law. Technically, to acquire (real estate) by any means whatever other than by descent or inheritance." See also, Annotation (c) to case of *U. S. v. Unzeuta*, 74 L. ed. 764.

The remaining issue consequently is merely whether or not the so-called "circumstances" mentioned in the opinion of the Court of Appeal were incompatible with the power of "exclusive legislation" over the Post area or evidenced any intention in respect thereto. We shall refer to the so-called circumstances separately.

The Purchase of utility supplies.

There has been no proof that any specific utility supplies were purchased from any state political corporation or municipality. The sole basis for any consideration of such purchases arises from the general statement made by Col. Hanlon (Post Commander) that the Post Command was "dependent" upon those sources for public utilities (R. 23). His deposition, however, was specific in disclosing that whatever utility supplies were obtained from municipal sources were purchased and delivered at the Post "gate" and that the furnishers of those supplies had nothing to do with distribution within the Post area (R. 23, 24).

To whatever extent any municipal corporation of the State may have sold water, electricity or other utility supplies to the Post Command, it is clear that such sales (consummated outside the limits of the municipality) were made by the municipal corporation in a strictly proprietary capacity and that in respect thereto the municipal corporation was engaged in private enterprise.

Olivedell Plant Co. v. Town of Lake Providence, 217 La. 622, 47 So. 2d 23.

The State municipal corporation delivering such supplies at the Post gate performed no function of any kind within the Federal enclave. The sale was the same as any other purchase from private sources, and it is settled that contracts to sell and sales consummated within a government enclave cannot be regulated by state law; for to hold otherwise would be a denial of the Federal power "to exercise exclusive legislation.".

> *Pacific Coast Dairy v. Department of Agriculture*, 318 U.S. 285, 63 S. Ct. 628, 87 L. ed. 761;
>
> *Collins v. Yosemite Park & Curry Co.*, 304 U.S. 518, 58 S. Ct. 1009, 82 L. ed. 1502;
>
> *Murphy v. Love*, 249 Fed. 2d 783.

The manner in which the purchases referred to have been made and the supplies handled for consumption actually accentuate the exercise of exclusive jurisdiction by the Post Command.

School Attendance

It has been generally conceded that where a Federal enclave is subject to the power of "exclusive legislation", the state within which it is located has no responsibility whatever for public services therein, including public education;

> *State ex rel. Moore v. Board of Education of Euclid City*, 57 N.E. 2d 118, and authorities cited therein;
>
> See also cases cited in Annotation appearing at 83 A.L.R. 2d 508;

and the rule seems to apply even when a state has reserved the power of taxation in ceding jurisdiction to the United States.

In re Annexation of Reno Quartermaster Depot Reservation, 69 Pac. 2d 659.

Congress has consequently made provision to make school facilities available to the children of parents residing upon government property under virtually all circumstances, e.g. 20 USCA 241, et seq. Louisiana has no law making any specific provision for public education of children residing on government property and the acceptance of the per capita tuition paid to the local school systems for the attendance of each child residing upon the Barksdale Air Force Base pursuant to arrangements particularly authorized by act of Congress was in fact a concession by the local school authorities that the area was subject to the exclusive jurisdiction of the United States. The arrangements made were the normal arrangements provided for the education of children residing upon property of the United States subject to the power of exclusive legislation.

Petitioner's Right of Way.

The stipulation of facts admitted in this cause discloses that the public is not permitted freedom of access to any portion of the lands within the limits of Barksdale Field traversed by the pipelines of petitioner and that its agents and employees have not been permitted upon those premises for the purpose of inspection and maintenance except when accompanied by a military guard or

escort. (R. 10) The admission is an admission of exclusive jurisdiction over the pipeline area and the fact of the maintenance of the lines is not in any sense in conflict with that jurisdiction. The question, we submit, was definitely settled in *United States v. Unzeuta*, 281 U.S. 138, 50 S. Ct. 284, 74 L. ed. 761.

A state has no power to tax private interests within a Federal enclave subject to the power of exclusive legislation except as permitted by act of Congress.

The question of exclusive territorial jurisdiction is distinct.

> ". . . That question assumes the absence of any interference with the exercise of the functions of the Federal Government and is whether the United States has acquired exclusive legislative authority so as to debar the State from exercising any legislative authority including its taxing and police power in relation to the property and activities of individuals and corporations within the territory. The acquisition of title by the United States is not sufficient to effect that exclusion. It must appear that the State, by consent or cession, has transferred to the United States that residuum of jurisdiction which otherwise it would be free to exercise. Surplus Trading Co. v. Cook, 281 U.S. 647, 650-652, 74 L. ed. 1091, 1094, 1095, 50 S.Ct. 455; James v. Dravo Contracting Co., 302 U.S. 134, ante, 155, 58 S.Ct. 208, 114 A.L.R. 318, supra. See also Ft. Leavenworth R. Co. v. Lowe, 114 U.S. 525, 527, 539, 29 L. ed. 264, 265, 269, 5 S.Ct. 995; Arlington Hotel Co. v. Fant, 278 U.S. 439, 451, 73 L. ed. 447, 450,

49 S.Ct. 227; United States v. Unzeuta, 281 U.S. 138, 142, 74 L. ed. 761, 773, 50 S.Ct. 284.

. . . .

". . . That question, however, involving the extent of the jurisdiction of the United States, is necessarily a Federal question. Brewer-Elliott Oil & Gas Co. v. United States, 260 U.S. 77, 87, 67 L. ed. 140, 145, 43 S.Ct. 60; United States v. Utah, 283 U.S. 64, 75, 75 L.ed. 844, 849, 51 S.Ct. 438; Borax Consolidated v. Los Angeles, 296 U.S. 10, 22, 80 L. ed. 9, 17, 56 S.Ct. 23."

Silas Mason Co. v. Tax Commission, 302 U.S. 196.

We are not concerned in this case with any question of reservation of any jurisdiction of the State of Louisiana for any purpose whatever in any act of cession or otherwise. The lands acquired by the United States were acquired with the unqualified consent of the State, thus vesting exclusive jurisdiction in the Federal government.

Under the Buck Act (4 USCA § 104, et seq.), the states have been permitted to impose certain excise taxes within Federal areas and the Military Leasing Act of 1947 and the Wherry Military Housing Act of 1949 (10 USC § 1270) were construed to permit the state taxation involved in *Offutt Housing Company v. Sarpy*, supra. In that case the court, in referring to the power of "exclusive legislation" vested in Congress under the constitutional provision, said:

". . . The power of 'exclusive Legislation' has been held to prohibit a state tax on private property

located on a military base acquired pursuant to Art. 1, § 8, cl. 17. Surplus Trading Co. v. Cook, 281 US 647, 74 L ed 1091, 50 S Ct 455. On the other hand, the State may acquire the right to tax private interests within such a location by permission of Congress, see, e.g., the Buck Act, 54 Stat 1059 (permitting state sales, use, and income taxes), ...

". . . We do not hold that Congress has relinquished this power over these areas. We hold only that Congress, in the exercise of this power, has permitted such taxation as is involved in the present case."

(351 U.S. 256-257, 260-261)

In *Howard v. Commissioners of the Sinking Fund, City of Louisville*, 344 U.S. 624, 73 S. Ct. 465, 97 L. ed. 617, involving an ordinance of the City of Louisville construed to impose an income tax, it was stated that:

"Even though the Ordnance Plant is within the boundaries of the City of Louisville pursuant to the annexation, exclusive jurisdiction over the area still remains with the United States, except as modified by statute. US Const. Art. I, § 8, cl 17; Surplus Trading Co. v. Cook, 281 US 647, 652 74 L ed 1091, 1095, 50 S Ct 455."

(344 U.S. 627)

The effect of vesting of exclusive jurisdiction over Federal property is clearly stated in *Arledge v. Mabry*, 52 N.M. 303, 197 Pac. 2d 884, as follows:

"To the extent any of the acts and things done on the condemned area in an application of state law are outside the purview of congressional authorization,

they cannot impinge upon the exclusive jurisdiction of the federal government otherwise obtaining. If exclusive jurisdiction over certain landed areas be ceded to the United States by a state, such jurisdiction cannot be recaptured by the state by later statute without consent of the United States. Rogers v. Squier, 9 Cir., 157 F. 2d 948; United States v. Unzeuta, 281 U.S. 138, 50 S.Ct. 284, 74 L. Ed. 761."

(197 Pac. 2d 895)

To same effect, see *Kingwood Oil Company v. Henderson County Bd. of Supervisors* (Ky.), 367 S.W. 2d 129.

It has been broadly stated that the power to tax has no limits and carries with it inherently the power to embarrass and destroy. See *Magnano Co. v. Hamilton*, 292 U.S. 40, 54 S. Ct. 599, 78 L. ed. 1109.

It is probably in this view of the danger of the power that Congress has not conferred upon the states a general power to tax private interests within properties over which the United States has exclusive jurisdiction. Efforts to impose regulations within government areas through the guise of allegedly permissible taxation have been held invalid,

Collins v. Yosemite Park & Curry Co., supra,
Murphy v. Love, supra;

and it is apparent that there should be effective safeguards against efforts to impose regulatory provisions by that means for the same reasons which caused the adoption of the Constitutional provision itself. To vest in the states an uncontrolled power to tax private interests upon government property would create obviously dangerous conflicts with the power of exclusive legislation.

The proprietary interest of the United States in Barksdale Air Force Base has continued at all times since the acquisition of the property for military uses. None of the so-called circumstances referred to by the courts below have been incompatible or in any sense in conflict with the exercise of exclusive jurisdiction over the Post area by the Post Command and no act of Congress permits the State of Louisiana and its subdivisions to levy ad valorem taxes upon private property located within the area subject to the power of exclusive legislation. The ad valorem taxes levied by those taxing authorities were consequently invalid.

Petitioner's pipelines do not traverse any portion of the area of Barksdale Field subject to oil, gas and mineral leases.

The record in the cases of Natural Gas & Oil Corporation and Mississippi River Fuel Corporation (No. 354) with which the case of Humble (No. 329) has been consolidated discloses that approximately 2,060 acres of the 22,000 acres of Barksdale Air Force Base are covered by an oil, gas and mineral lease now held by the petitioners in Docket No. 354. However, it is admitted that the lands traversed by Humble's pipelines have been used at all times exclusively for military purposes, include no part of the leased area, and that Humble's pipeline operations have no connection or relationship to the production of oil from the leased acreage (R. 9, 10).

If there has been any action which might be construed under the authority of any statute of the United

States (of which we have no information) as permitting the State to levy ad valorem taxes upon private property within Barksdale Field, that permissive authority must be restricted to the leased area which is not traversed by Humble's lines. In the course of its opinion herein, the Court of Appeal of Louisiana said:

> "Although the land traversed by plaintiff Humble Pipe Line Company's lines is not a part of the East Reservation of Barksdale Air Force Base, the portion of which is covered by the oil, gas and mineral lease, or leases, involved in the companion cases, we may point out that the lease provision, Section 2, under Rents and Royalties (7) (K), which imposed upon the lessee the obligation to pay all State taxes, evidences an intention of the United States not to accept exclusive jurisdiction over the property embraced within the limits of the base. This plaintiff cannot clothe itself with the mantle of governmental immunity any more so than could the Murphy Corporation in the cited case in the State Court(6) or the Mississippi River Fuel Corporation in the cited case in the Federal Court.(7) Its sole claim to immunity is the fact that its physical property is situated within the enclosure of Barksdale Air Force Base."
>
> (R. 47)

It is quite clear that lands acquired by the United States for military uses with the consent of the state in which located are subject to the power of the exclusive legislation of the government, which precludes any right

(6) *Murphy Corporation v. Fontenot*, 225 La. 379, 73 So.2d 180; cert. denied 348 U.S. 831, 75 S.Ct. 54, 99 L. ed. 655.

(7) *Mississippi River Fuel Corporation v. Fontenot*, 234 F.2d 898; cert. denied 352 U.S. 916, 77 S.Ct. 213, 1 L.ed 2d 122.

of state ad valorem taxation within the area. In respect to the extent of such jurisdiction over any specific part of lands so acquired, this Court in *Benson v. United States*, 146 U.S. 325, 36 L. ed. 991, said:

> "It is contended by appellant's counsel that, within the scope of those decisions, jurisdiction passed to the general government only over such portions of the reserve as are actually used for military purposes, and that the particular part of the reserve on which the crime charged was committed was used solely for farming purposes. But in matters of that kind the courts follow the action of the political department of the government. The entire tract had been legally reserved for military purposes. United States v. Stone, 69 U.S. 2 Wall, 525, 537 [17:765, 767]. The character and purposes of its occupation having been officially and legally established by that branch of the government which has control over such matters, it is not open to the courts, on a question of jurisdiction, to inquire what may be the actual uses to which any portion of the reserve is temporarily put. . ."
>
> (146 U.S. 331)

See also, *Arlington Hotel Co. v. Fant*, 278 U.S. 439, 49 S. Ct. 227, 73 L. ed. 447.

In accordance with the original plans for the establishment of Barksdale Air Force Base, the Department of the Air Force adapted the entire field to its uses, and it is not within the province of a state court to attempt to say that the jurisdiction so acquired has been relinquished over any part of the area unless there has been a specific relinquishment in respect to a particular part thereof pursuant to authority of an act of Congress as

this Court found in *Offutt Housing Company v. Sarpy Co.*, supra.

The statement in the opinion of the state court to the effect that "this plaintiff cannot clothe itself with the mantle of governmental immunity" is merely demonstrative of the persistence of the court in confusing the doctrine of governmental immunity from state taxation with the question of territorial jurisdiction as evidenced particularly by its treatment of the decision in *James v. Dravo Contracting Company*, supra. In this same connection, the decision of the Louisiana Supreme Court in *International Business Machines Corporation v. Ott*, 230 La. 666, 89 So. 2d 193 (upon which the Court of Appeal largely relied), should be compared with *International Business Machines Corporation v. Vaughn* (Fla.), 98 So. 2d 747.

CONCLUSION

For the reasons assigned, it is respectfully submitted that the judgment of the Court of Appeal, Second Circuit, State of Louisiana, should be reversed and judgment rendered in favor of petitioner for refund of the amount of the taxes involved, with interest, as prayed for.

LEON O'QUIN,
Fifth Floor, First National Bank Building,
Shreveport, Louisiana,
Attorney for Petitioner.

THOMAS A. HARRELL,
Fifth Floor, First National Bank Building,
Shreveport, Louisiana,
Of Counsel.

APPENDIX

&

Louisiana Constitution — LSA - Const. Art. 4, § 12, par. 2:

"Provided further, that the State, or any agency or political corporation or subdivision thereof may, through the authorized representatives thereof, donate by fee simple title, or otherwise convey, to the United States, any lands, property, movable and immovable, rights of way, easements or other servitudes, or any of them, which they now own, or may hereafter acquire by purchase donation, expropriation or otherwise, for the following public purposes; use, in connection with the improvement and maintenance of the navigation of natural waterways, the construction and improvement and maintenance of artificial navigable waterways and river and harbor works of every description and kind authorized by any Act or Acts of the Congress of the United States or Federal Statutes, or otherwise, and in connection with flood control works of every description and kind so authorized, or in connection with airports, flying fields, landing fields, parks, forest preserves, canals, irrigation districts, hospitals, agricultural experiment and research stations, military posts, and for military uses; and for the purpose of acquisition and improvement of property for such purposes, may incur debt, issue bonds and levy taxes as otherwise provided in this Constitution."

Act No. 4 of the Regular Session of the Legislature of Louisiana for the year 1930.

"Section 1. Whereas, the State of Louisiana owns lands which were formerly the beds of certain navigable bodies of water and of other streams in Bossier Parish, Louisiana, which are within a tract to be donated by the City of Shreveport to the United States of America for an airport, flying field, landing field, military post and military uses; and

"Whereas, the United States of America will not accept said tract of land without the inclusion of this property within said tract belonging to the State of Louisiana, and

"Whereas, said project is a great benefit to the State of Louisiana, and to the very vital cause of national defense;

"Whereas, the State of Louisiana is authorized by its Constitution to donate its property to the United States of America by fee simple title for such purposes; now therefore

"Be it enacted by the Legislature of Louisiana that all of the beds of the streams, lakes, bayous and lagoons, whether navigable or non-navigable, lying within the following described area, All of Township 18 North, Range 12 West, South of the Vicksburg, Shreveport and Pacific Railway Company's right of way; all of Township 18 North, 13 West, South of Vicksburg, Shreveport and Pacific Railway Company's right of way, South and East of the North and West high bank of Cross Bayou and East of the West high bank of Mack's Bayou; Also, all of Sections 1, 2 and 3 Township 17 North, Range 13 West, lying East of the right of way of the Louisiana Railway

and Navigation Company; all of Sections 1, 2, 3, 4, 5 and 6; the northeast Quarter (NE ¼) of Section 7, All of Sections 8, 9, 10, 11 and 12; the East Half of Northeast Quarter (E ½ of NE¼) of Section 17; the North Half (N ½) of Section 16, and the Northwest Quarter of Northwest Quarter (NW¼ of NW¼) Section 15, Township 17 North, Range 12 West; all of Section 19 South of the right of way of the Vicksburg, Shreveport and Pacific Railway, and all of Sections 30 and 31, Township 18 North, Range 11 West, and the West 3/4 of Sections 6 and 7, Township 17 North, Range 11 West; with particular reference to Red Chute Bayou, Mack's Bayou, Cross Bayou, Alligator Bayou, Mussell Shell Bayou, Clear Lake, Moon Lake and Flag Lake and other Lakes, lagoons, streams and bayous within the above described area, whether named herein or not, situated in Bossier Parish, Louisiana, be and is hereby donated to the United States of America for an air port, flying field, landing field, military post and for military purposes."

Act No. 31 of the Regular Session of the Legislature of Louisiana for the year 1942.

"To amend and re-enact Sections 1 and 2 of Act No. 12 of the Regular Session of 1892; entitled: 'An Act To cede jurisdiction to the United States over certain land and for the purchase and condemnation thereof, and to repeal all acts in conflict therewith.

"Section 1. Be it enacted by the Legislature of Louisiana That Sections 1 and 2 of Act No. 12 of 1892 be amended and reenacted so as to read as follows:

"Section 1. Be it enacted by the Legislature of Louisiana, That the consent of the State of Louisiana is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation or otherwise, of any land in this State required for sites for forts, magazines, arsenals, dockyards, and other needful buildings, or for any other purposes of the Government of the United States.

"Section 2. That the United States may enter upon and occupy any land in the State of Louisiana which it has heretofore acquired, or may hereafter acquire, by purchase, condemnation, lease or otherwise, required for sites for forts, magazines, arsenals, dockyards, and other needful buildings, or for any other purposes of the Government of the United States, and shall have the right of exclusive jurisdiction over the property so acquired, during the time that the United States shall be or remain the owner or lessee thereof, for all purposes, except that the State retains the right to serve therein all

civil and criminal process issuing under authority of the said State, and all lands so held and title to which is vested in the United States shall be and remain exempt from all state, parochial, municipal or other taxation, assessment or other charges which may be levied or imposed by or under authority of this State.

"Section 2. That all laws or parts of laws which are in conflict with the provisions hereof are hereby repealed to the extent of such conflict.

"Section 3. The necessity for the immediate passage of this act having been certified to the Legislature, by the Governor, while the legislature is in session, this act shall become effective immediately upon approval by the Governor."

Act No. 12 of the General Assembly of the State of Louisiana, at the Regular Session of 1892.

"To cede jurisdiction to the United States over certain land and for the purchase and condemnation thereof.

"Section 1. Be it enacted by the General Assembly of the State of Louisiana, That the United States shall have power to purchase or condemn in the manner prescribed by law, upon making just compensation therefor, any land in the State of Louisiana, not already in use for public purposes, required for custom houses, court houses, arsenals, national cemeteries, or for other purposes of the government of the United States.

Section 2. Be it further enacted, etc., That the United States may enter upon and occupy any land which may have been, or may be purchased or condemned, or otherwise acquired, and shall have the right of exclusive jurisdiction over the property so acquired during the time that the United States shall be or remain the owner thereof for all purposes, except the administration of the criminal laws of said State, and the service of civil process of said State therein, and shall hold the same exempt from all State, parochial, municipal or other taxation."

LSA-R.S. 47:2110

"No court of this state shall issue any process whatsoever to restrain the collection of an ad valorem tax imposed by the state, or by any political subdivision thereof, under authority granted to it by the legislature or by the constitution. Any person resisting the payment of any amount of tax found due, or the enforcement of any provision of the tax laws in relation thereto, shall pay the amount found due to the officer designated by law for the collection of such tax and shall give the officer notice at the time of payment of his intention to file suit for the recovery of such tax. Upon receipt of such notice, the amount so paid shall be segregated and held by the officer for a period of thirty days. If suit be filed within such time for the recovery of the tax, such amount so segregated shall be further held pending the outcome of the suit. If the taxpayer prevails, the officer shall refund the amount to the taxpayer with interest at the rate of two per centum (2%) per annum for the period from the date such funds were received by the officer to the date of such refund."